

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DEREK HUGH FLANARY,

Petitioner,

v.

DAREN SWENSON,

Respondent.

Case No. C06-5380RBL/KLS

REPORT AND RECOMMENDATION

**NOTED FOR:  
January 12, 2007**

This habeas corpus petition has been referred to the undersigned United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner filed a motion for leave to proceed *in forma pauperis*. (Dkt. # 1). On October 29, 2006, Petitioner was ordered to show cause why his application should not be denied for failure to provide a written consent form. Petitioner has failed to respond to the Court's order.

**DISCUSSION**

This matter comes before the Court on Petitioner's filing of an application to proceed *in forma pauperis* and a petition for writ of *habeas corpus* under 28 U.S.C. § 2254. To file a petition and initiate legal proceedings, Petitioner must pay a filing fee of \$5.00 or file a proper application to proceed *in forma pauperis*. In addition, Local Rule CR 3(b) provides in relevant part:

At the time application is made under 28 U.S.C. § 1915 or other applicable acts of Congress, for leave to commence any civil action or to file any petition or motion without being required to prepay fees and costs or give security for them, each petitioner, movant or plaintiff shall:

(1) Complete the in forma pauperis affidavit approved for use in this district; and

(2) File a written consent that the recovery, if any, in the action, to such amount as the court may direct, shall be paid to the clerk who may pay therefrom all unpaid fees and costs taxed against the plaintiff, and to his attorney the amount which the court allows or approves as compensation for the attorney's services.

Petitioner was ordered to cure these deficiencies by either paying the filing fee of \$5.00 or by providing the written consent form to the Court no later than November 20, 2006. (Dkt. #4). Plaintiff did not respond to the Court's Order by the November 20<sup>th</sup> deadline, nor did he seek an extension of the deadline.

### CONCLUSION

Plaintiff was ordered to show cause why his application for leave to proceed *in forma pauperis* should not be denied. (Dkt. # 4). Plaintiff has not complied with this Court's Order nor has he sought an extension of the deadline. The Court recommends the action be **DISMISSED WITHOUT PREJUDICE**. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report and Recommendation to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **January 12, 2007**, as noted in the caption.

**DATED** this 7th day of December, 2006.



Karen L. Strombom  
United States Magistrate Judge